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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIF.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re	)	Case No. 95-10911 aj
)	
GERALD ARMSTRONG,	)	Chapter 7
)	
Debtor	)	Adv. No. 95-1164
)	
_____	)	GERALD ARMSTRONG'S
CHURCH OF SCIENTOLOGY	)	OBJECTION TO TRUSTEE'S
INTERNATIONAL, a California non-	)	ABANDONMENT OF PROPERTY
profit religious corporation,	)	OF ESTATE PURSUANT TO
	)	11 U.S.C. § 554; AND
Plaintiff,	)	REQUEST FOR AN ORDER
	)	ENJOINING SCIENTOLOGY
	)	FROM INSTITUTING OR
v.	)	CONTINUING ANY ACTION
	)	TO COLLECT DISCHARGED
GERALD ARMSTRONG,	)	DEBT AGAINST ARMSTRONG
	)	AND THIRD PARTIES
Defendant.)	
_____)	

I.

OBJECTION TO ABANDONMENT

Defendant Gerald Armstrong respectfully objects for the reasons set forth below to this Court requiring the bankruptcy trustee to abandon the "fraudulent conveyance" action (Marin Superior Court Case No. 157680) to plaintiff Scientology organization. Armstrong denies that any of his actions at any time constitute in any way "fraudulent conveyances," and uses that term only for clarity herein.

1. Scientology is presently enjoined by the Discharge of Debtor filed by this Court March 30, 1996

1 "from instituting or continuing any action or employing
2 any process or engaging in any act to collect such debts
as personal liabilities."

3 Scientology's continuing its "fraudulent conveyance" action, and
4 its instant application for the purpose of continuing that action,
5 are violations of this Court's injunction.

6 2. This Court has already rendered its decision on the
7 "fraudulent conveyance" issue. Scientology did not appeal from
8 this decision. The doctrine of collateral estoppel prevents
9 Scientology from relitigating the issue in another action.

10 A. As Scientology stated in its application, on May 25,
11 1995 this Court ordered that

12 "The fraudulent conveyance actions belong to the
13 bankruptcy estate. If the causes of action are
14 abandoned pursuant to Section 554 of the Bankruptcy
15 Code, then the Church may pursue them. Until then, the
actions can be maintained only by the bankruptcy
trustee. Accordingly, insofar as the motion addresses
the fraudulent conveyance action, it will be denied."

16 B. On July 12, 1995 Scientology filed its "Complaint to
17 Determine Dischargeability and in Objection to Discharge," in
18 which it stated:

19 "Armstrong claims that in August, 1990, he was directed
20 by God to give away his material assets. He transferred
21 real property valued at approximately \$530,000 and at
22 least \$35,000 in cash to his friend and lawyer, Michael
23 Walton. He also claims that he forgave a outstanding
24 debt to Walton of \$30,000. Armstrong further claims
25 that he forgave other debts to friends and family
members totalling approximately \$133,000 and gave away
additional cash totalling \$1,500. Armstrong has
asserted under oath that he received no valuable
consideration for any of these transfers." Complaint,
4:21-5:2.

26 "Shortly after making the transfers referred to []
27 supra, Armstrong initiated successive breaches of the
28 Agreement, which resulted in the filing of the State
Court Action. When Armstrong disclosed the transfers in
the State Court Action, CSI brought the fraudulent
conveyance against Armstrong and Michael Walton. That
action was consolidated into the State Court Action in
September, 1994." Complaint, 6:14-20.

1 "After Armstrong transferred and/or hid his assets in
2 1990, he set out on a course of conduct intended
3 deliberately to damage and harass CSI. For years, and
4 despite ongoing litigation, Armstrong has deliberately
5 and repeatedly violated his Agreement not to discuss his
6 claimed Scientology knowledge and experiences, and he
7 has done so with the intent and purpose of impeding,
8 injuring and destroying CSI and the Scientology faith."
9 Complaint, 11:1-8.

10 C. On January 24, 1996 Scientology filed a motion for leave
11 to file an amended adversary complaint. The amended complaint
12 contained the same language as quoted in B. supra.

13 D. On February 13, 1996, Scientology filed its trial brief
14 in which it stated:

15 "V. ARMSTRONG IS NOT ENTITLED TO DISCHARGE PURSUANT TO
16 BANKRUPTCY CODE SECTION 727(a)(5) Trial Brief 21:1-3.

17 "Here the evidence will show that Armstrong claimed
18 substantial assets, including proceeds of his settlement
19 with the Church, prior to 1990 [citations to exhibits].
20 The evidence will also show that Armstrong claims that
21 in August, 1990, acting on directions from the Almighty,
22 he "gave away" (to his close friends and family), a
23 great deal of cash, a house, and "forgave" substantial
24 debt, totalling at least \$200,000 [citations to
25 exhibits]. It was not until Armstrong had thus given
26 away or hidden all his assets that he began breaching
27 the Agreement." Trial Brief 21:14-23

28 "Debtors are not permitted to simply assert that their
lifestyle caused them to dissipate all of their assets,
and use that unverified comment to justify their
inability to pay their creditors." Trial Brief 22:2-3.

"Here, Armstrong had known assets of at least \$518,000,
and conceded having substantial assets in 1990. His
only explanation -- that he gave some of it to his
friends to enhance himself spiritually -- does not
explain where the rest went, and, indeed is itself
unsatisfactory. The evidence will thus demonstrate this
as a separate, independent basis to deny Armstrong
discharge." Trial Brief 22:10-14.

E. In his declaration, which Scientology incorporated into
its trial brief, Lynn Farny stated:

"I am corporate secretary of the Church of Scientology
International ... and an executive in CSI's Legal
Affairs Department." Farny declaration, 2:5,6.

"I am the person with primary responsibility for the

1 Church's litigation with Gerald Armstrong." Farny
2 declaration, 2:16,17.

3 "Armstrong is also not entitled to a discharge because
4 he has not satisfactorily explained how he dissipated,
5 in a few short years, all of his assets, including the
6 hundreds of thousands of dollars which he received from
7 the 1986 settlement." Farny declaration, 3:7-9.

8 "Armstrong and his friends have testified that just
9 before Armstrong began breaching the Agreement, he
10 divested himself of assets as follows:

- 11 a. Gave title of his home, valued at \$530,000, to
12 Michael Walton, Armstrong's lawyer and roommate;
- 13 b. Forgave a debt owed by Walton of \$30,000;
- 14 c. Gave Walton furniture, a bank account with
15 \$35,000 to \$40,000 and a share of stock in [The Gerald
16 Armstrong Corporation];
- 17 d. Forgave a debt owed by Jerry Solfvin of
18 \$16,000;
- 19 e. Forgave a debt owed by Iolna Dawson of
20 \$30,000;
- 21 f. Forgave debts of \$70,000 - \$100,000 owed by
22 Michael and Kima Douglas;
- 23 g. Forgave a debt owed by Andrew Armstrong of
24 \$12,000; and
- 25 h. Gave all his cash, home furnishings, and his
26 car to his girlfriend Lorien Phippeny (a/k/a Bambi
27 Sparks).

28 F. Armstrong has always rejected Scientology's allegations
of "fraudulent conveyances." In his Answer and Amended Answers to
Scientology's adversary proceeding he fully defended the
"fraudulent conveyance" allegations.

G. On February 6, 1996 he filed six trial declarations,
each of which covered an aspect of the issues in the State cases
and the adversary proceeding. In his First Trial Declaration
Armstrong stated:

In August, 1990 I was greatly moved by the buildup
toward war in the Middle East, and the general condition
of man. I prayed to God for guidance as to what I
should do, and received the word of God: "Keep nothing.
Give what you have to the poor. Take only what you
need." I gave my possessions to those whom I believed
had a need for them as put in my heart by God, forgave
debts owed to me, and determined to go where God would
have me go and do what God would have me do; which I
believed was to help where my help was asked for. For

1 the next year God had me, among other things, offer
2 myself to resolve the Middle East conflict, do some
3 house painting and carpentry work, deal with the pending
4 appeal, attempt to correct Scientology's subversion of
5 the legal system, agree to help the victims of
6 Scientology who asked for my help, and offer myself to
7 resolve the Scientology conflict in which I had been
8 drawn by Scientology's attacks. I am filing herewith
9 as Trial Declaration No. 4 a declaration I wrote in
January, 1994, which detailed the circumstances leading
up to and surrounding my 1990 renunciation, and my legal
situation at that time. I wrote this declaration in
response to Scientology's lawsuit in which it falsely
charged that my giving away of my worldly possessions
was to render myself judgment proof so I could attack
the organization in violation of the 1986 settlement
agreement. First Trial Declaration, 15:20-16:13.

10 H. This Court stated in its Memorandum of Decision filed
11 February 15, 1996:

12 "Scientology also seeks to deny Armstrong's discharge on
13 the grounds that he has failed to explain the
14 dissipation of his assets and failed to schedule an
15 interest in a corporation wholly owned by him.
16 ¶Scientology argues that Armstrong should not be granted
17 a discharge because he has failed to explain the
18 disposition of the settlement proceeds and because he
19 failed to schedule as an asset in interest in the Gerald
20 Armstrong Corporation. Scientology has not met its
burden of proof as to either ground.
21 ¶Given the 10 years between the payment of the
22 settlement and the bankruptcy, as well as Armstrong's
23 mental state as evidenced by his testimony, it is not
24 surprising in the least that he has none of the
25 settlement proceeds left, nor is its dissipation any
26 great mystery." Decision, 2:9-22

27 3. Allowing Scientology to proceed in State Court at this time
28 would deny discharged debtor the "fresh start" for which the
Bankruptcy Code is designed.

Pursuant to 11 USC § 548(a), only the trustee is authorized
to bring an action to avoid a fraudulent transfer. The trustee
has a duty to bring an action for the avoidance of a fraudulent
transfer if such an action would benefit the estate. Lovell v.
Mixon, 719 F.2d 1373 at 1378. Armstrong accepts Scientology's
representation that "the trustee has indicated he does not intend

1 to pursue these ["fraudulent conveyance"] claims in the future."
2 It is usually advisable for the trustee to act quickly in pursuing
3 such claims. Id. at 1378.

4 The trustee could have acted at any time after Armstrong
5 filed his Chapter 7 petition. It would be very untimely for the
6 Trustee to at this date pursue the "fraudulent conveyance" claims
7 after the issue was litigated by Scientology in its adversary
8 proceeding and after this Court has issued its Discharge of
9 Debtor.

10 It is no less untimely for Scientology to pursue these
11 "claims." Scientology could have, long before the February 13,
12 1996 trial in its adversary proceeding, brought a motion to allow
13 it to pursue such an action in the name of the estate if the
14 trustee improperly failed to bring the action or abandoned the
15 action. Nevada State Bank v. Jones, 846 F.2d 477. The Trustee did
16 not improperly fail to bring the action, because there were no
17 fraudulent conveyances and no legitimate claim to be pursued.

18 Actions brought by creditors under state fraudulent
19 conveyance laws prior to the debtor's filing in bankruptcy are
20 prohibited by the automatic stay. Re Mortgageamerica Corp, 714
21 F.2d 1266 at 1275. When the stay expires upon the granting of the
22 debtor's discharge, the Bankruptcy Code provides for a discharge
23 injunction to replace the protection afforded a debtor by the
24 automatic stay. Re Brown, 39 BR 820.

25 "A bankruptcy statute such as § 554 ... is to be interpreted
26 with basic bankruptcy policies in mind, including the policy of
27 promoting a fresh start for the debtor. Where there is no
28 overriding policy, the fresh start policy is controlling." Re A.J.
Lane & Co. Inc., 133 BR 264 at 274. There is no overriding

1 policy, and there will be no "fresh start" for Armstrong if
2 Scientology is allowed to pursue its state court action.

3 II.

4 MOTION FOR INJUNCTION

5 Armstrong hereby moves this Court pursuant to Bankruptcy Code
6 § 105 for an order enjoining Scientology from any further efforts
7 to collect any debts discharged by this Court against debtor or
8 third parties.

9 § 105(a) states:

10 "The Court may issue any order process or judgment that
11 is necessary or appropriate to carry out the provisions
12 of this title. No provision of this title providing for
13 the raising of an issue by a party in interest shall be
14 construed to preclude the court from, sua sponte, taking
any action or making any determination necessary or
appropriate to enforce or implement court orders or
rules, or to prevent an abuse of process.

15 This Court is empowered, moreover, to enjoin parties from
16 proceeding in state or other federal courts against nondebtors.
17 In Celotex Corp. v. Edwards, (1995) 115 S. Ct. 1493.

18 In the "fraudulent conveyance" action, Scientology sued
19 Armstrong and Michael Walton, and then added Mr. Walton's wife
20 Solina Walton as a defendant.

21 Prior to Armstrong's filing of his Chapter 7 petition,
22 Scientology attorney Laurie Bartilson and director Michael Rinder
23 both communicated to Mr. Walton that Scientology does not actually
24 seek to take possession of the house in which they live,
25 Armstrong's interest in which he conveyed to Mr. Walton in 1990,
26 nor does Scientology actually seek monetary damages against the
27 Waltons. Ms. Bartilson and Mr. Rinder both communicated to Mr.
28 Walton that Scientology is prosecuting the "fraudulent conveyance"
action to get Mr. and Mrs. Walton to pressure Armstrong to sign an

1 affidavit attacking what is known as the "Breckenridge decision,"
2 the decision of Judge Paul G. Breckenridge, Jr. in June, 1984 in
3 the case of Scientology v. Armstrong, Los Angeles Superior Court
4 Case no. C 420153. The Breckenridge decision is appended to
5 Armstrong's Answer in the adversary proceeding as Exhibit A. Mr.
6 Walton will provide a declaration to this Court confirming what
7 Ms. Bartilson and Mr. Rinder told him. Mr. Rinder has also told
8 Armstrong directly that Scientology will cease its attacks on him
9 if he signs such an affidavit. This is a wrongful purpose for the
10 "fraudulent conveyance" action, and such an abuse of process can
11 be prevented by this Court's order.

12 Scientology's use of the law to harass its opponents and its
13 abuse of the legal process are well recognized by this country's
14 courts. Armstrong will provide judicial decisions to substantiate
15 this fact if this Court has any doubt as to its truthfulness.

16 That Scientology seeks to have the Trustee abandon the
17 "fraudulent conveyance" action so that it can pursue the action
18 for a wrongful purpose is supported by the very fact that the
19 Trustee did not pursue it. Before the Bankruptcy Court can order
20 abandonment of property under § 554, it must find either that the
21 property is burdensome to the estate, or that the property is both
22 of inconsequential value and inconsequential benefit to the
23 estate. Re. K.C. Machine & Tool Co., 816 F.2d 238. There is no
24 value to the Trustee or the estate in pursuing the "fraudulent
25 conveyance" action in order to get Armstrong to roll over and sign
26 Scientology's false affidavit.

27 Mr. and Mrs. Walton are the proper and legal owners of the
28 house which is the subject of Scientology's "fraudulent
conveyance" action. Mr. and Mrs. Walton are being attacked by the

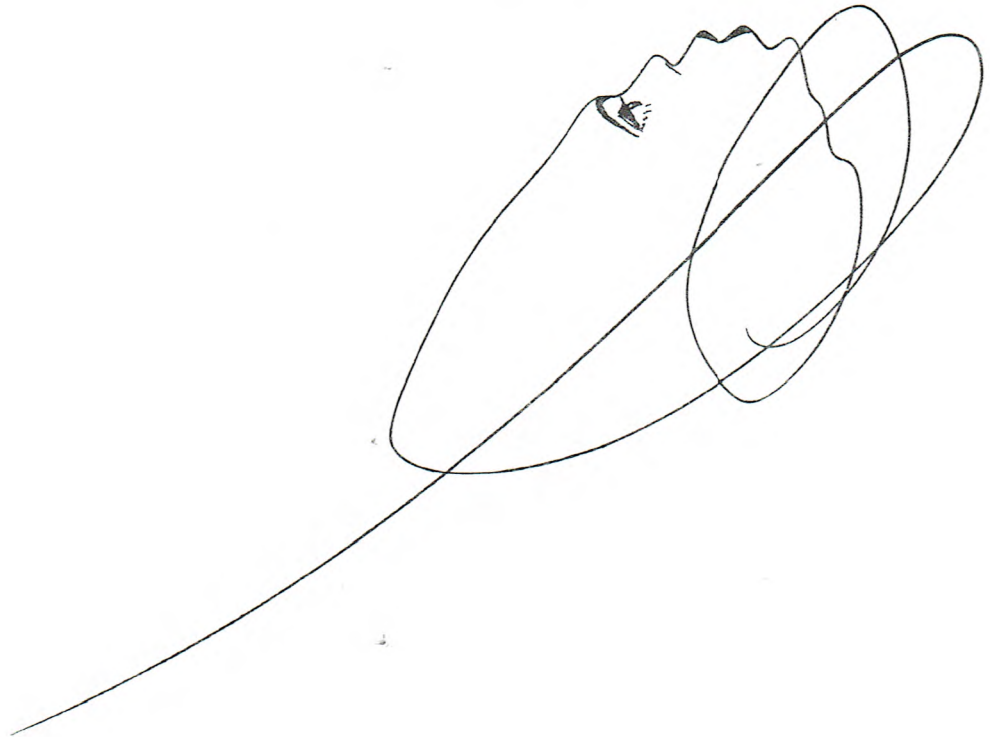
1 terribly litigious Scientology organization because they are
2 Armstrong's friends and Scientology has the opportunity. That Mr.
3 Walton is a lawyer and Armstrong's friend is no fault of theirs.
4 Many lawyers have friends. Mr. and Mrs. Walton have a family and
5 private lives and should be left alone.

6 In conclusion, Armstrong respectfully requests this Court to
7 use its powers to protect him and the Waltons from further
8 harassment by Scientology.

9 DATED: April 29, 1996

10
11 GERALD ARMSTRONG

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A large, stylized handwritten signature in black ink, appearing to read 'GERALD ARMSTRONG', is written over the printed name. The signature is composed of several overlapping loops and a long, sweeping horizontal stroke at the bottom.

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GERALD ARMSTRONG'S OBJECTION TO TRUSTEE'S ABANDONMENT OF
PROPERTY OF ESTATE PURSUANT TO 11 USC § 554; AND REQUEST
FOR AN ORDER ENJOINING SCIENTOLOGY FROM INSTITUTING OR
CONTINUING ANY ACTION TO COLLECT DISCHARGED DEBT AGAINST
ARMSTRONG AND THIRD PARTIES

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[x] (State) I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

P. W. H.